

## **Remarks**

In the office action, claims 1-3, 6-13, and 15-17 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,031,956 to Hudgins ("Hudgins") in view of U.S. Patent No. 5,658,037 to Evans ("Evans"). Claims 4 and 14 were deemed to be allowable if rewritten in independent form.

In this response, Applicants have amended claims 1 and 12 and have added new claims 18-20. Upon entry of the amendments, claims 1-20 will be pending in this application. In view of the amendments and the following remarks, Applicants respectfully request withdrawal of the rejections to claims 1-3, 6-13, and 15-17, and allowance of new claims 18-20.

### **A. Rejections under 35 U.S.C. § 103:**

Claims 1-3, 6-13, and 15-17 were rejected under 35 U.S.C. § 103(a) as being obvious over Hudgins in view of Evans.

Hudgins describes a clamp for securing a tarpaulin over a truck that has an upper, open entranceway closed off by a clamping lever that is biased for urging the clamping portion into its clamping state. The tarp 17 is clamped at a bottom horizontal edge by clamp 10.

Evans describes a retractable closure system that includes a flexible sheet having a torsion spring material that causes the flexible sheet to form a roll when retracted. Evans discloses tarpaulins secured in a closed position, as shown for example in Figs. 24 and 25, by an axially displaceable member 6000 disposed at the bottom edge of the tarpaulin.

Independent claim 1, as amended, recites a covering for a utility vehicle superstructure that includes a tarpaulin having two vertical lateral edges and two pivoting strips:

wherein each of the two vertical lateral edges of the tarpaulin can be secured laterally by one of the pivoting strips.

Independent claim 12, as amended, recites a utility vehicle superstructure for a truck or a container, that includes a superstructure opening, and:

a pivoting strip disposed laterally of said superstructure opening and pivotable about a vertical axis to a holding position; and

a tarpaulin for closing said superstructure opening, said tarpaulin including a plurality of resilient members prestressed in an upward direction and a first lateral tarpaulin edge configured to be held by said pivoting strip when said pivoting strip is pivoted to the holding position.

Claims 1 and 12 were amended, without thereby narrowing their scope, merely to clarify that the lateral edge(s) of the tarp refers to the vertical lateral edge(s). As is described in applicants' specification, and shown in the drawings, the lateral edges of tarpaulin 2 refers to the side edges and not to the top and bottom edges of the tarpaulin 2. With respect to claim 12, the pivoting strip is now recited as being pivotable about a vertical axis. Again, the pivoting strip 6 is shown and described in applicants' specification as being disposed laterally of the superstructure and pivoting about a vertical axis so as to hold the side edge – not the bottom edge – of tarpaulin 2 (see, for example hinge 6c in Fig. 2). In claim 12 itself, the phrase “lateral edge” is defined in the context of the limitation of claim 12 that the tarpaulin is prestressed “in an upward direction”.

Applicants respectfully submit that neither Hudgins nor Evans teaches or suggests the above-recited features of independent claims 1 and 12. Specifically, with respect to claim 1, neither reference suggests the feature of a two pivoting strips, wherein each of the two “lateral edges” of the tarpaulin can be secured “laterally” by one of the pivoting strips. On the contrary, both Evans and Hudgins show the solution conventionally found in the prior art, wherein the bottom edge of the tarpaulin are secured. There is no suggestion in either reference of the lateral edges being secured laterally, particularly when the lateral edges are properly construed as being the vertical lateral edges of the tarpaulin.

Likewise, with respect to claim 12, neither reference suggests a pivoting strip disposed laterally of the superstructure opening and being pivotable about a vertical axis to a holding position. Nor does either reference suggest the feature of “a first lateral tarpaulin edge configured to be held by said pivoting strip when said pivoting strip is pivoted to the holding position.” Rather, Hudgins describes a clamp disposed at the underside of the tarp, pivoting about a horizontal axis to secure a bottom edge of the tarp, while Evans discloses a latching member disposed at the bottom of the tarp that is not pivotable at all, but rather axially displaceable. In addition, there is no suggestion for a lateral edge of the Evans tarp to be held by a pivoting strip, but instead only the bottom edge of the Evans tarp is configured to be held by the Evans latching member.

Withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

**B. New Claims 18-20:**


Applicants have added new claims 18-20 further reciting features not suggested by the prior art of record. Specifically, claim 18 recites the feature that a length of each of the two pivoting strips be substantially the same as a length of a respective vertical lateral edge. Accordingly, only a single pivoting strip is required on each side of the tarpaulin instead of a plurality of clamps. New claim 19 recites that each of the pivoting strips be configured to secure a respective vertical lateral edge of the tarpaulin along its extension. Accordingly, the stresses imparted to the tarpaulin will have a continuous distribution. New claim 20 recites that the plurality of resilient members are configured to roll the tarpaulin upward along the pivoting strip. By contrast, in both Hudgins and Evans, the tarp is removed away from the securing means.

**CONCLUSION**

For at least the reasons stated above, Applicant requests withdrawal of the rejections to the pending claims. It is respectfully submitted that the application is now in condition for allowance. Should the Examiner feel that an interview would advance prosecution of the present application, the Examiner is invited to contact the undersigned.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: 

William C. Gehris, Reg. No. 38,156  
(signing for Thomas P. Canty, Reg. No. 44,586)

Davidson, Davidson & Kappel, LLC  
485 Seventh Avenue - 14<sup>th</sup> Floor  
New York, New York 10018  
(212) 736-1940